

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Robert Venetucci,

Civil No. 10-89 ADM/AJB

Plaintiff,

v.

ORDER

Warden B.R. Jett, et al.,

Defendants.

Based upon the Report and Recommendation by United States Magistrate Judge Arthur J. Boylan dated January 7, 2011, with all the files and records, and no objections having been filed to said Recommendation, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss is **granted** [Docket No. 22] and plaintiff Robert Venetucci's complaint is **hereby dismissed** without prejudice on mootness grounds.

2. Plaintiff Robert Venetucci's Motion for Order of Default and Request for an Emergency Order is **denied as moot** [Docket No. 13]. The request for an emergency order is moot on the same grounds that support dismissal of the action, i.e. the plaintiff was seeking hernia surgery and the relief has been obtained. Likewise, default would allow only relief which has already been obtained.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 28, 2011

s/Ann D. Montgomery
Ann D. Montgomery
United States District Court Judge